

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

ORIGINAL
RECEIVED

MAR 18 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Revision of Part 22 and)
Part 90 of Commission's Rules)
to Facilitate Future)
Development of Paging Systems)
)
Implementation of)
Section 309(j) of the)
Communications Act --)
Competitive Bidding)
)

WT Docket No. 96-18

PP Docket No. 93-253

To: The Commission

DOCKET FILE COPY ORIGINAL

**JOINT COMMENTS OF ARCH COMMUNICATIONS GROUP
AND WESTLINK LICENSEE CORPORATION
ON THE NOTICE OF PROPOSED RULEMAKING**

Carl W. Northrop, Esq.
Christine M. Crowe, Esq.
Paul, Hastings, Janofsky
& Walker
1299 Pennsylvania Ave., N.W.
Tenth Floor
Washington, D.C. 20004
(202) 508-9570

March 18, 1996

No. of Copies rec'd
List A300E

029

SUMMARY

Arch Communications Group and Westlink Licensee Corporation (the "Companies") are commenting on the proposed market area licensing rules for paging. Generally, the Companies support the Commission's Major Trading Area-based auction proposal, but urge the Commission to get the new licensing scheme in place immediately to avoid serious disruption to the robust narrowband messaging market.

The Companies seek modifications or clarifications of the Commission's proposals in the following key respects:

The Need for Mechanisms to Avoid Subjecting Incumbents to "Phantom" Mutual Exclusivities - The public interest will not be served if incumbent licensees who serve the vast majority of the population in an MTA on a particular channel are forced to wait for the conclusion of an extended auction proceeding before being able to receive a license for the remaining area in the MTA which will only be of interest to them. The Commission must adopt procedures that avoid putting these territories on hold for the benefit of theoretical competitors who do not materialize, or insincere applicants who are speculating in licenses. Several recommendations of

the Companies address these concerns, including the proposals to (a) drop the "substantial service" test^{1/}, (b) automatically issue the market area license to incumbents who meet high service thresholds,^{2/} (c) adopt market-by-market, frequency-by-frequency stopping rules,^{3/} and (d) modify the upfront payment rules to require potential bidders to evidence a seriousness of interest in each license for which they apply.^{4/}

Retain Existing Service and Protection Criteria in the 900 MHz Band - The Companies oppose the proposed abandonment of the fixed mileage service and interference contours specified in Part 22 of the rules for 931 MHz facilities. The proposed new formulas do not accurately reflect real world conditions. And, a retroactive application of the formulas would subject carriers to overwhelming and wasteful paperwork burdens.^{5/} The fixed mileage contours now specified in Part 22 of the rules for 931 MHz facilities should be retained and extended to 929 MHz stations. The only

^{1/} See discussion infra at para. 11.

^{2/} See discussion infra at para. 30.

^{3/} See discussion infra at paras. 25-27.

^{4/} See discussion infra at para. 33.

^{5/} See discussion infra at para. 14.

plausible utilization of formula-based service and interference contours is with respect to facilities licensed subsequent to the adoption of rules providing such formulas. In that regard, the Companies suggest that the Commission adopt the formula proposed in these Joint Comments as opposed to that provided in the Notice of Proposed Rulemaking.

TABLE OF CONTENTS

I.	Preliminary Statement	2
II.	Time is of the Essence	3
III.	The Geographic Licensing Proposal	3
	A. Nationwide Channels	4
	B. Service Area	6
	C. Coverage Requirements	7
	D. Co-Channel Interference Protection	10
	E. Eligibility	14
	F. Channel Aggregation Limit	15
IV.	Competitive Bidding Issues	16
	A. License Grouping	16
	B. Bidding Procedures	17
	C. Anti-Collusion Rules	19
	D. Pre-auction Application Procedures	20
	E. Upfront Payments	22
	G. Transfer Disclosure Requirements	24
	H. Treatment of Designated Entities	25
V.	Conclusion	27

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Revision of Part 22 and)	
Part 90 of Commission's Rules)	
to Facilitate Future)	WT Docket No. 96-18
Development of Paging Systems)	
)	
Implementation of)	
Section 309(j) of the)	
Communications Act --)	PP Docket No. 93-253
Competitive Bidding)	
)	

To: The Commission

**JOINT COMMENTS OF ARCH COMMUNICATIONS GROUP
AND WESTLINK LICENSEE CORPORATION
ON THE NOTICE OF PROPOSED RULEMAKING**

Arch Communications Group, Inc. ("Arch") and Westlink Licensee Corporation ("Westlink") (collectively, the "Companies"), by their attorneys, hereby file their Joint Comments on the permanent licensing proposal set forth in the Notice of Proposed Rulemaking, FCC 96-52, released February 9, 1996 (the "Notice") in the above-captioned proceeding.^{6/} The following is respectfully shown:

^{6/} Arch and Westlink earlier participated in comments on the interim licensing proposal. See Joint Comments on Interim Licensing Proposal filed by AACS Communications, Inc., et al. filed March 1, 1996; Joint Reply Comments on the Interim Licensing Proposal filed March 11, 1996.

I. Preliminary Statement

1. The Companies are leading providers of wireless messaging services, primarily paging.^{1/} The Companies have entered into a transaction pursuant to which their paging operations will be combined, resulting in the third largest paging company in the United States.^{8/} The Companies also are substantial participants in narrowband PCS licensees.^{2/} Each was active in the narrowband PCS auction processes and is, therefore, highly familiar with market area auction procedures for narrowband services.

2. Based on the foregoing, the Companies have a substantial basis in experience for informed comment in this proceeding.

^{1/} Arch had over 2,000,000 pagers in service as of December 31, 1995. During the year ending December 31, 1995 Arch's subscriber base grew by 1,468,000 pagers or 272.9%, and its internal subscriber base growth (excluding pagers added through acquisitions) was 366,000 pagers or 68%. Westlink had approximately 454,000 pagers in service as of December 31, 1995 as a result of operations in 16 states located in the western portion of the country.

^{8/} The combined company will have operations in a total of 38 states including 90 of the largest 100 markets.

^{2/} Westlink holds a 49.9% equity interest in Benbow PCS Ventures, Inc., which acquired exclusive rights to a 50 kHz outbound/12.5 kHz inbound license in each of the central and western regions of the United States. Arch holds a 10.5% equity interest in PCS Development Corporation which acquired exclusive rights to a contour 50 kHz inbound/50 kHz outbound two-way messaging license in each of the five regions throughout the United States.

II. Time is of the Essence

3. At the outset, the Companies must emphasize the importance of resolving this proceeding quickly so that paging auctions can commence at the earliest practical date.^{10/} The Commission first decided to use auctions to resolve mutually exclusive requests for common carrier paging frequencies back in 1993,^{11/} yet not a single auction for traditional paging channels has been conducted to date. At the present time, well over 1,100 applications repose before the Commission in a mutually-exclusive status.^{12/} The public interest is not served by a continuation of this situation.

III. The Geographic Licensing Proposal

4. The public interest will be served by converting to geographic licensing for all paging channels that are licensed on an exclusive, non-nationwide basis.^{13/} Paging service has evolved away from single-site systems

^{10/} The Companies believe that any delay beyond the fall of 1996 in the commencement of market area license auctions will have significant adverse public interest ramifications.

^{11/} Implementation of Sections 3(a) and 332 of the Communications Act, Third Report and Order, GN Docket No. 93-252, 9 FCC Rcd. 7988, 8135 (1994).

^{12/} Indeed, many applications of the Companies fall into this category, and they find themselves at a standstill in several regions where customer demands for service are growing rapidly.

^{13/} Notice, para. 21.

towards multi-site systems that cover large geographic areas, and it makes no sense to continue to subject both the applicants and the Commission to the paperwork burdens associated with the licensing of each individual transmitter. Subject to the proposed changes and refinements discussed below, the Companies generally support the Commission's approach.^{14/}

A. Nationwide Channels

5. The Commission proposes to exclude from its market area licensing plan those channels that already have been assigned to single licensees on a nationwide basis under the existing rules, including all PCP channels for which licensees had met the construction requirements for nationwide exclusivity as of February 8, 1996.^{15/} However, the exclusion should be extended to include qualifying systems built after the adoption date of the Notice based on applications filed beforehand.

6. An impermissible retroactive modification of licenses would occur were the Commission not to permit

^{14/} For example, the Companies endorse the Commission's proposed treatment of incumbents (Notice, para. 37), the maximum power and height power limit, (Notice), para. 39), the proposed step down in power at the border areas of adjacent MTAs (Notice, para. 62) and the uniform treatment of all geographic areas regardless of their proximity to international borders. (Notice, para. 64.)

^{15/} This was the adoption date of the Notice.

licensees to complete authorized construction and thereby retain nationwide exclusivity accorded in the present rules.^{16/} Section 90.495(c) of the PCP exclusivity rules provides:

A proposed paging system that meets the criteria for channel exclusivity under Paragraph (a) of this section will be granted exclusivity under this section **at the time of initial licensing**. Such exclusivity will expire unless the proposed system (or a sufficient portion of the system to qualify for exclusivity) is constructed and operating within eight months of the licensing date.^{17/}

This rule section clearly establishes that exclusivity rights vest at the point of initial licensing and only are divested in the absence of construction.^{18/}

^{16/} Section 316 of the Communications Act of 1934, as amended, protects licensees against an involuntary modification of their license. Case precedent also establishes that retroactive rulemaking is not favored. See Bowen v. Georgetown University Hospital, 488 U.S. 204, 208-9 (1988); Kaiser Aluminum & Chemical Corp. v. Bonjuorno, 110 S.Ct. 1570, 1579 (1990) (Scalia, J. concurring); Chester Associates, 2 FCC Rcd. 2029, 2030 (Rev. Bd. 1987).

^{17/} 47 C.F.R. §90.495(c) (emphasis added).

^{18/} In view of the application filing freeze, the Commission will be assured that applicants are not "rolling over" authorizations in order to accord them additional time to construct a sufficient number of transmitters. Basically, within 12 months of the adoption date of the Notice, nationwide rights will either have been perfected or they will have expired.

7. Allowing existing license holders to complete ongoing construction programs and retain exclusivity also is supported by general considerations of fairness. Given the relatively recent vintage of exclusivity procedures,^{19/} many carriers are in the midst of substantial PCP construction programs. The Commission should avoid volatile rule changes that will have the effect of discouraging investment in regulated businesses.

B. Service Area

8. The 47 Rand McNally-defined Major Trading Areas ("MTAs") provide the most appropriate geographic area boundaries for paging systems.^{20/} MTAs are big enough to accommodate some wide-area systems, but not so big as to exclude smaller carriers from meaningful participation in the marketplace. Because it will be necessary for carriers to aggregate MTAs in order to establish multi-state and larger service areas, all MTAs for each channel must become

^{19/} The PCP exclusivity rules were adopted in 1993 and have only recently been reaffirmed following certain petitions for reconsideration. Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-931 MHz, Report and Order, PR Docket No. 93-35, 8 FCC Rcd. 8318 (1993) (the "PCP Exclusivity Order").

^{20/} Notice, para. 33. Arch and Westlink are working with the industry association, PCIA, in support of the entry of a blanket copyright license agreement with Rand McNally covering the paging industry.

available for auction simultaneously to facilitate the aggregation of wider service territories.^{21/}

9. There is, however, one set of circumstances in which the Companies support the designation of a channel for nationwide licensing.^{22/} Certain PCP permittees who hold authorizations for a sufficient number of locations to qualify for nationwide exclusivity will fail to build compliant systems within the construction deadline. These channels will have been shielded from other licensing during the construction period, will be relatively clear of incumbent operations, and should be auctioned on a nationwide basis.

C. Coverage Requirements

10. Minimum coverage requirements are an appropriate condition when receiving a market area license in order to prevent frequencies from lying fallow. The Commission proposals to require coverage to 1/3 of the population within the geographic area within 3 years of the initial license grant, and to 2/3 of the population by the end of 5 years, are appropriate.^{23/} Additionally, the Companies suggest a requirement that a licensee cover 10% of

^{21/} See discussion, infra at paras. 23-24 regarding auction sequence.

^{22/} See Notice, para. 36.

^{23/} Notice, para. 41.

the population within the first year of service, thereby deterring spectators and avoiding a situation in which it takes 3 years for a license to be returned to the public domain by a defaulting carrier.

11. However, the Companies strenuously oppose the alternative proposed at Paragraphs 41 and 43 of the Notice whereby the Commission contemplates that a carrier might only be required to provide "substantial service" to the geographic license area within 5 years to retain a license. This vague standard presents a significant risk that an insincere applicant could preempt an important channel over a broad geographic area for a considerable period of time with no broad-based service being provided to the public in the hope that needs would develop over a 5 year period that would enable them to subject incumbents on the frequency in the MTA to "green-mail". In addition, a substantial service requirement may be appropriate in a service -- such as 900 SMR -- where the marketplace already has supported the development of various "niche" services. For example, several customized wireless data services developed in the 900 SMR band that did not have wide-area potential. The Companies know of no such niche or specialized services that have developed in the paging band. This being the case, allowing a party to acquire the "white space" in a market where it will be incapable of meeting either the near-term

or the far-term coverage requirements serves no public interest objective, but does present a significant opportunity for mischief. The public interest is best served by eliminating the substantial service alternative and requiring all licensees to meet the same construction benchmarks.^{24/}

12. The Notice seeks comment on the sanctions that should apply if a carrier fails to comply with construction requirements.^{25/} Regardless of whether the geographic licensee is an incumbent in the market or a newcomer, any and all sites constructed after the auction pursuant to the market area license should be forfeited if the construction

^{24/} This conclusion is consistent with the Commission's indication that "regardless of the extent to which their respective service areas are operated by co-channel incumbents, geographic licensees should be responsible for meeting their coverage requirements". This worthy proposal of the Commission will be completely undermined by the adoption of a "substantial service" standard. Notice, para. 43.

^{25/} Notice, para. 44.

benchmarks are not met.^{26/} This "death penalty" is necessary to deter speculation.^{27/}

D. Co-Channel Interference Protection

13. The Notice points out some variations in the specific methodologies used to measure interference in different paging bands and seeks comment on whether to adopt a standard methodology for measuring interference. It would be extremely disruptive and burdensome for the Commission to impose drastically altered service area and interference contours upon existing systems for the sake of uniformity. The best course is for the Commission to maintain the existing protection criteria that have served the industry -- and the public -- so well to date.^{28/}

^{26/} Under this proposal, an incumbent's pre-auction facilities would continue to be protected on a grandfathered basis. This is appropriate because the incumbent met all applicable construction obligations with respect to these stations, and the authorizations were unconditional.

^{27/} Otherwise, applicants with no bona fide intention of constructing a system meeting the coverage requirements would have nothing to lose by "cherry picking" (i.e., proceeding with construction only in highly populous territories) despite the absence of any serious intent to build a wide area system satisfying the coverage requirements.

^{28/} In the case of the lower band Part 22 channels, this means the Commission should retain the mathematical formulas and contour overlap provisions recently adopted in the Part 22 Rewrite Order as proposed in Paragraph 48 of the (continued...)

14. In the 900 MHz band, the Commission proposes to substitute a formula for determining service and interference contours in lieu of continuing to use the fixed radius protection now provided for 931 MHz channels^{29/} and in lieu of the standard minimum geographic separations provided for 929 MHz exclusive channels.^{30/} This approach would place an enormous burden on paging carriers and on the Commission. For example, the engineering data now filed with 929 MHz applications does not include all of the information that would be necessary in order to calculate service and interference contours using the new formula.^{31/} **In essence, imposing the formulas on preexisting facilities would require a retroactive reengineering of virtually every 900 MHz paging facility in the country. Any such ruling by the Commission is completely at odds with the deregulatory**

^{28/} (...continued)

Notice. See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, CC Docket No. 92-115, 9 FCC Rcd. 6513, 6503-64 (1994).

^{29/} Notice, paras. 49-55. See 47 C.F.R. §22.537(e), (f). See also Table E-1 and E-2, 47 C.F.R. §22.537.

^{30/} See 47 C.F.R. §90.495(b)(2).

^{31/} Antenna patterns and terrain data are not provided with applications filed in this service, making it impossible to calculate the effective radiated power or contours along the eight cardinal radials.

directions the Congress and the Commission are and should be taking.^{32/}

15. Worst of all, the proposed formula also does not accurately represent real world service and interference contours. Utilizing the formula would create non-contiguous service areas in geographic areas where actual market experience indicates each company is enjoying efficient and reliable service. The Companies cannot endorse the use of a formula that would create results inconsistent with actual operating conditions.^{33/}

^{32/} The Commission has initiated a number of proceedings designed to reduce regulatory burdens and streamline paperwork. "Commission Proposes to Eliminate or Reduce Common Carrier Reporting Requirements", CC Docket No. 96-23, Public Notice, Report No. DC-96-16, released February 26, 1996; Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report and Order, IB Docket No. 95-118, FCC 96-79; released March 13, 1996; "FCC Reduces Regulatory Burdens for International Telecommunications Services", IB Docket No. 95-119, Public Notice, Report No. DC-____, released February 29, 1996; and Reorganization and Revision of Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, Report and Order, WT Docket No. 94-148, released February 29, 1996. The public interest would not be served by undermining these worthy initiatives by ordering a burdensome reengineering of existing 900 MHz paging facilities to satisfy a general urge for "uniformity".

^{33/} The Companies attribute the differential to a variety of factors including enhanced coverage that can result when multiple sites simulcast,
(continued...)

16. A transition to the formula is further complicated by prior Commission actions which eliminated the requirement that licensees submit to the Commission applications for interior sites.^{34/} Fill-ins that qualified as interior sites using the fixed radii specified in Part 22 of the rules might not remain interior if their parameters and those of other perimeter sites needed to be recalculated using the new formula. There will be a high prospect of litigation as carriers seek to protect and maintain sites that are not matters of public record with the Commission.

17. On balance, the Commission must recognize that the existing service and interference contours defined in Part 22 of the rules for existing 931 MHz facilities have served the public interest and should not be altered.^{35/}

^{33/} (...continued)

increased paging receiver sensitivity, and terrain factors.

^{34/} See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, CC Docket No. 92-115, 9 FCC Rcd. 6513, 6518 (1944).

^{35/} Carriers have designed systems with a reasonable expectation that they would continue to enjoy the service area and protection granted to them under the current rules.

The Commission should utilize the identical table from Part 22 of the rules for both 929 and 931 frequencies.^{36/}

18. Once the Commission confirms that all pre-existing 900 MHz paging facilities shall have grandfathered contours as specified in Part 22 of the rules, it might consider using a modified formula for future sites. Attachment 1 hereto is an engineering statement prepared by CompComm, Inc. that sets forth alternative formulas that the Companies find suitable because they more closely approximate real world experience.

E. Eligibility

19. The Companies agree that both incumbents and new entrants should be allowed to apply for geographic licenses without restrictions on eligibility.^{37/} However, the public interest considerations that support open entry should not be construed by the Commission to require that channels which already support extensive systems, and on which white space is only available in marginal peripheral areas, need be subject to lengthy auction procedures to provide a licensing opportunity for a theoretical competing applicant who may never materialize. An open entry policy

^{36/} This uniformity makes sense since the separation criteria specified in Part 90 of the rules were in fact derived from the protection criteria earlier adopted under Part 22 for the technically comparable 931 MHz frequencies.

^{37/} Notice, para. 66.

does not preclude the Commission from adopting reasonable means to avoid mutual exclusivities in the public interest.^{38/}

F. Channel Aggregation Limit^{39/}

20. There should be no aggregation limit on 25 kHz paging frequencies. No carrier is remotely close to having either the channel position or the market power to dominate the paging industry.^{40/} Under these circumstances, there is no reason for the Commission to adopt channel aggregation limits, particularly since any such limit would be inherently arbitrary.

21. Channel aggregation limits also are inappropriate since other wireless service providers who possess vastly greater bandwidth than paging companies are allowed to provide paging services. For example, cellular and PCS licensees, which hold authorizations for 30 MHz and up to 40 MHz of spectrum respectively, are allowed to

^{38/} As is discussed in greater detail within, the Companies propose that licensees who already meet very high construction thresholds not be subjected to competing applications on their fully developed channels. See discussion infra at Section IV.D.

^{39/} Notice, paras. 68-69.

^{40/} The Notice correctly identifies 120 common carrier and 53 private carrier paging channels that are available. Notice, para. 3. This relatively large number of frequencies has resulted in a proliferation of paging companies.

provide and do provide^{41/} paging services. It would be fundamentally unfair to adopt an arbitrary limit on the ability of paging carriers to aggregate 25 kHz paging channels when they are competing against wideband licensees who possess much more spectrum.

IV. Competitive Bidding Issues

22. Generally, the Companies support the simultaneous multi-round electronic auction procedures proposed by the Commission. However, the Commission has properly recognized certain aspects of the paging business, and the channels that are available for auction, that require specially tailored procedures. The following comments focus on the aspects of the forthcoming paging auctions that require special attention.

A. License Grouping

23. In grouping paging licenses for auction, the Commission must strike a balance between the desire to make potentially substitutable channels available simultaneously, while avoiding auctioning so many licenses at one time that the auction becomes unmanageable. This balance is best struck by conducting an initial auction of all 929 MHz and 931 MHz licenses for all MTAs, followed by a second auction for the Part 22 and Part 90 lower band channels. The 900

^{41/} For example, Sprint Spectrum, one of the early entrants to the PCS market, is providing paging service incidental to its PCS offering.

MHz band has been the subject of the greatest licensing activity of late which argues in favor of conducting auctions for this band first. Additionally, technical similarities between 931 and 929 operations make all frequencies in these ranges comparable for service purposes. These factors argue in favor of auctioning off the 929 and 931 MHz paging channels at the same time.

24. Auctioning off all 900 MHz paging licenses in all MTAs in a simultaneous multiple round auction will put a considerable number of licenses in play at one time. But participants in the auction will likely have a relatively small number of channels and geographic areas of primary interest, and will find the process to be manageable.

B. Bidding Procedures

25. The most important aspect of the proposed auction procedure is the market-by-market, frequency-by-frequency stopping rule proposed at Paragraph 83 of the Notice. A modified stopping rule is absolutely necessary to prevent paging auctions from becoming interminable and delaying critical system expansions that are necessary to permit carriers to serve the public. Many paging systems cover vast proportions of the area population making the underlying frequency of real interest to only one applicant. No public interest benefit would accrue were the Commission

to cause such frequencies to remain unassigned until all bidding had ceased elsewhere.

26. The market-by-market, frequency-by-frequency stopping rule also holds promise of reducing the number of licenses in play in the auction to easily manageable proportions in a reasonable period of time.^{42/} Given the number of paging licenses that will be involved in the auction, reaching early closure on some frequencies should be viewed as an incidental benefit of the proposed stopping rule.^{43/}

27. The Companies propose one minor refinement to the market-by-market, frequency-by-frequency stopping rule by having bidding close on each license after two rounds pass in which no new acceptable bids are submitted for that particular license, rather than one round as proposed by the

^{42/} In view of the Companies' support of a market-by-market stopping rule, they agree with the Commission's tentative conclusion that it is unnecessary to implement an activity rule. The fact that bidding on certain channels may close promptly will act as an adequate incentive for applicants to maintain a high level of activity in the auction or risk being shut out.

^{43/} The Companies support the Commission proposal to retain discretion to vary the duration of bidding rounds or the interval at which bids are accepted. They suggest bidding on an every other day basis during the first week or so of the auction, with the expectation that the Commission would run one or two rounds per day relatively soon after the auction commenced.

Commission.^{44/} This extra round will provide bidders with a last clear chance to bid on a frequency with notice that bidding on that frequency in a particular market may close.^{45/}

C. Anti-Collusion Rules

28. The Commission must adopt safeguards against collusion in paging auctions. However, there are aspects of the market that require special attention. The paging industry is undergoing consolidation which enables companies to achieve economies of scope and scale, and thereby continue to reduce the prices they charge for services to the public. The Commission should not adopt any anti-collision rules that would have a chilling effect on publicly beneficial acquisitions.

29. If two companies who happen to be bidding on licenses in the same market desire to merge, they could be subjected to challenges by third parties who claim that discussions incidental to the purchase and sale transaction necessarily implicated bidding information and bidding strategy. The Companies recommend a safe-harbor in this

^{44/} Notice, para. 83.

^{45/} Allowing two open rounds also will provide a safety valve so that applicants will not inadvertently omit bidding on a particular license only to find that their opportunity to correct their oversight will have been lost because the channel has closed.

situation. Personnel in a paging company that are privy to that company's bidding strategy should be allowed to provide certificates to management indicating that they have not and will not discuss bids or bidding strategy with their counterparts in an acquired or acquiring company. Management would in turn be allowed to rely upon these certificates to certify to the Commission compliance with the anti-collusion rules notwithstanding the pendency of a purchase and sale transaction. Absent a prima facie showing by a challenger that the certification is false, these companies should be free to proceed with their transaction without violating the anti-collusion rule.^{46/}

D. Pre-auction Application Procedures

30. Paging channels already extensively deployed throughout an MTA by an existing carrier should be exempted from the auction procedure. Before any auction, incumbents

^{46/} A safe harbor also should be adopted for carriers who have an existing co-carrier arrangement with a licensee operating on a common channel in an adjoining territory. Co-channel licensees with cooperative arrangements must communicate regularly in order to provide reliable and efficient service to the public. The Commission should not adopt an overly broad anti-collusion rule that discourages these useful inter-carrier exchanges. Consequently, an exception to the anti-collusion rule should be adopted which permits carriers who have inter-carrier agreements on a particular channel in adjacent market areas to continue with routine inter-carrier coordination within the ordinary course of their businesses.